

E-Filed on January 17, 2007

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

40 North Central Avenue, Suite 1900
Phoenix, Arizona 85004-4429
Facsimile (602) 734-3824
Telephone (602) 262-5756

Susan M. Freeman AZ State Bar No. 004199
Email: sfreeman@lrlaw.com
Rob Charles NV State Bar No. 0065934
Email: rcharles@lrlaw.com

Attorneys for Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company
06-10725 – Lead Case

USA Capital Realty Advisors, LLC
06-10726

USA Capital Diversified Trust Deed Fund, LLC
06-10728

USA Capital First Trust Deed Fund, LLC
06-10728

USA Securities, LLC
06-10729

Debtors.

Jointly Administered

Chapter 11 Cases

Judge Linda B. Riegler Presiding

Supplement to Joinder in Debtors’
Opposition to Motion to Enforce
Order Granting Debtors’ Motion to
Distribute Funds

Date: January 31, 2006
Time: 9:30 a.m.

Affecting:☐ All Cases**or Only:**☒ USA Commercial Mortgage Company☐ USA Capital Realty Advisors, LLC☐ USA Capital Diversified Trust Deed Fund, LLC☐ USA Capital First Trust Deed Fund, LLC☐ USA Securities, LLC

The Official Committee of Unsecured Creditors of USA Commercial Mortgage Company (the “Committee”) hereby supplements its joinder to Debtors’ Opposition to Motion to Enforce Order Granting Debtors’ Motion to Distribute Funds.

USA Commercial Real Estate Group, Inc. (“USA CREG”) seeks an order of this Court requiring USA Commercial Mortgage Company to distribute sums that now amount to about \$180,656.53 collected on Loans in the name of but not paid over to USA CREG.



At a hearing on January 3, 2007, this Court directed the parties objecting to the requested distribution to supplement their position by January 18, 2007. This is the Committee's supplement.

On January 8, 2007, this Court entered its order Confirming the "Debtors' Third Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein (DE 2376). With respect to claims of insiders, such as USA Commercial Real Estate Group, Inc., Debtors' Third Amended Joint Chapter 11 Plan of Reorganization provides that all Claims of non-Debtor insiders against USA Commercial Mortgage Company ("USACM") are Subordinated Claims.¹ Subordinated Claims are classified in Class A-7.² The Plan provides the following treatment of Class A-7:

Payment to holders of Allowed Subordinated Claims shall be subordinated to the payment in full, plus interest, of all Allowed Penalty Claims. It is anticipated that holders [of] Allowed Subordinated Claims shall receive no distribution under the Plan. In the unlikely event that Cash exists after all Allowed Penalty Claims are paid in full, plus interest, the Plan shall be deemed to be amended to provide that such Cash be distributed Pro Rata to the holders of Allowed Subordinated Claims, plus interest. Class A-7 is impaired, and the holders of Class A-7 Claims are deemed to reject the Plan.³

USA CREG is an entity owned and controlled by Hantges and Milanowski, as confirmed by Mr. Milanowski on behalf of USA CREG in his testimony under Bankruptcy Rule 2004 on November 9, 2006.⁴ USA CREG asserts that USACM is wrongfully withholding its funds as a direct lender. That assertion gives rise to a claim under 11 U.S.C. § 101(5).

¹ The Plan provides in definition 126 on page 19: "Subordinated Claim' means any and all Claims of Non-Debtor Insiders against USACM."

² Plan, § II.C.1.g.i at page 34.

³ Plan, § II.C.1.g.ii at page 35.

⁴ Transcript, page 9, line 15, to page 10, line 6 (Milanowski and Hantges are the shareholders); page 10, lines 18 – 24 (Milanowski "might be" an officer); Hantges a director (*passim*).



Although Milanowski's counsel objected to the Plan,⁵ as did USA CREG's counsel Mr. Sylvester on behalf of other insiders,⁶ USA CREG did not object to this provision. Upon confirmation, the Plan binds USA CREG with respect to treatment of its claim,⁷ and the property retained by the Debtor under the Plan is free of claims of USA CREG.⁸

Accordingly, USA CREG's claim is subordinated and the funds USACM is withholding are free of USA CREG's claims and the motion to require immediate distribution of funds withheld from USA CREG should be denied.

Dated January 17, 2007.

LEWIS AND ROCA LLP

By /s/ RC (#006593)

Susan M. Freeman, AZ 4199 (pro hac vice)

Rob Charles, NV 6593

Attorneys for Official Committee of Unsecured Creditors

⁵ Objection to Confirmation of Plan Filed by Russell S. Walker on behalf of Joseph Milanowski, Thomas Hantges, USA Investment Partners, LLC (DE 2051).

⁶ Limited Objection to Confirmation of Plan Filed by Jeffrey R. Sylvester on behalf of Haspinov, LLC, Pecos Professional Park, LLC (DE 2052).

⁷ 11 U.S.C. § 1141(a).

⁸ 11 U.S.C. § 1141(c).